

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

ROBERT MURRAY

PETITIONER

V.

CIVIL ACTION NO. 3:11cv199-TSL-MTP

RONALD KING

RESPONDENT

REPORT AND RECOMMENDATION

THIS MATTER is before the court on the Petitioner's Motion [16] for Summary Judgment and Motion [17] for Default Judgment. Having considered the Motions, the undersigned recommends they be denied.

In his Motions [16][17], Petitioner urges the court to enter a default judgment against the Respondent for filing an untimely answer. He further argues that he is entitled to judgment as a matter of law since Respondent failed to serve him with a copy of his response, which prevented Petitioner from filing a traverse.

A review of the docket indicates Respondent's answer was due on or about June 20, 2011. On June 17, 2011, Respondent moved for an extension and was granted an extension through August 11, 2011, to file his answer or other responsive pleading. *See* Motion [9] and Text Order dated 6/20/11. Respondent filed his Answer [11] on August 10, 2011, and filed the state court record on August 12, 2011. Accordingly, Respondent timely filed his answer to the petition.

Petitioner claims he did not receive a copy of the answer or exhibits and was thus prevented from filing a traverse, although Respondent's certificate of service indicates Petitioner was mailed a copy of same on August 12, 2011. *See* Notice of Corrected Certificate of Service

[12]. Respondent should be directed to provide Petitioner with another copy of his answer, and Petitioner should be granted another opportunity to file a traverse.

RECOMMENDATION

For the reasons stated above, the undersigned recommends that the Petitioner's Motion [16] for Summary Judgment and Motion [17] for Default Judgment be denied. If this Report and Recommendation is adopted, the undersigned further recommends that the Respondent be directed to provide Petitioner with another copy of his answer and exhibits within ten days of the entry of the order, and that Petitioner be granted an additional fourteen days after service of the answer to file a traverse.

NOTICE OF RIGHT TO OBJECT

In accordance with the rules and 28 U.S.C. § 636(b)(1), any party within fourteen days after being served a copy of this recommendation, may serve and file written objections to the recommendations, with a copy to the judge, the magistrate judge and the opposing party. The District Judge at the time may accept, reject or modify in whole or part, the recommendations of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court to which the party has not objected. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

THIS, the 7th day of September, 2012.

s/ Michael T. Parker

United States Magistrate Judge